

### **REMARKS/ARGUMENTS**

The Office Action of May 31, 2006, has been reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

Claims 2, 4-32 and 42-57 are pending in this application. By this amendment, non-elected withdrawn claims 33-41 have been cancelled without prejudice or disclaimer; claims 1, 3 and 18 have been cancelled without prejudice or disclaimer; claims 2, 4-6, 8, 11, 13, 15, 17, 19, 22, 24-27, 29, 31 and 32 have been amended for editorial purposes; and new claims 42-57 have been added. No new matter has been added. Note that claims 5, 15 and 29 have been rewritten in independent form to include the subject matter of their respective base claim and any intervening claims. However, claims 5, 15 and 29 have not been substantively amended.

#### *35 U.S.C. §102 Rejections*

Claims 1-3, 5 and 11-14 stand rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. patent no. 5,338,117 to Kucksdorf et al. (Kucksdorf). Claims 1 and 3 have been cancelled without prejudice or disclaimer, and claims 2 and 11-14, as amended, depend from independent claim 15. Accordingly, Applicants respectfully request reconsideration and allowance of claim 5.

Claim 5 has been rewritten in independent form to include the subject matter of its base claim (claim 1) and intervening claim 3. However, claim 5 has not been substantively amended.

Claim 5 recites a sealed, multi-handled bag having, among other features,

a first flap formed from portions of the opposing panels extending beyond the first seam at the first end ...

wherein the first flap includes a stack of panels formed from the portions of the opposing panels extending beyond the seam, the first handle is formed by one of a cut and a series of perforations formed through the stack, and the stack of panels includes a double stack of panels formed from the portions of the opposing panels extending beyond the seam being folded over and attached to themselves.

Emphasis added. At least this subject matter is not disclosed by Kucksdorf.

In contrast, Kucksdorf discloses a bag having flaps 40' and 42' as shown in Figs. 22 and 23 that extend beyond a heat seal 54. The flaps can include tucked portions that may increase the thickness of portions of the flaps. However, Kucksdorf clearly fails to teach or suggest folding over the flaps extending beyond the seam and attaching them to themselves as recited in

independent claim 15. For at least this reason, Applicants respectfully submit that independent claim 5 is not anticipated by Kucksdorf.

*35 U.S.C. §103(a) Rejections*

Claims 8-10, 18, 19, 21, 24-28, 31 and 32 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kucksdorf. Claims 4, 15-17, 20, 29 and 30 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kucksdorf in view of U.S. patent no. 5,593,229 to Warr (Warr). Claims 6, 7, 22 and 23 stand rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Kucksdorf in view of U.S. patent no. 6,923,574 to Siegel (Siegel). Claim 18 has been cancelled. Reconsideration and allowance of the remaining claims are respectfully requested.

Independent claim 15 recites the subject matter of a sealed, multi-handled bag having “a first flap formed from portions of the opposing panels extending beyond the first seam at the first end; a first handle formed in the first flap; a second handle attached to the second end; and a first tear seam at the first end.” Similarly, independent claim 29 recites the subject matter of a sealed, multi-handled loose-materials bag having, among other features, “a first handle attached to the first end; a second handle attached to the second end; and a first tear seam at the first end.”

It would not have been obvious to modify Kucksdorf in view of Warr to include a team seam as proposed in the Office Action, as doing so would destroy the intended square end functionality of the Kucksdorf bag. Further, there would have been no motivation for one of ordinary skill in the art to perform the proposed modification. In addition, it is entirely unclear how the rectangular or triangular folded ends of Kucksdorf could be modified to include a tear seam as disclosed in Warr.

It is well-grounded that a proposed modification would not have been obvious if it destroys its intended function. *See e.g., In Re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). Further, it is equally well grounded that the mere possibility that the prior art could be so modified does not make the modification obvious “unless the prior art suggested the desirability of such a modification.” *In re Brouwer*, 77 F.3d 422 (Fed. Cir. 1996).

The Office Action is unable to show a motivation for combining the references. Instead, the Office Action asserts that the combination of Kucksdorf and Warr as a whole would suggest

the subject matter of independent claims 15 and 29. However, taken as whole, the combination would not suggest the proposed modification to Kucksdorf as it destroys the intended functionality of Kucksdorf, and there is no suggestion to make the proposed modification contrary to the advantages provided by the triangular and rectangular fold portions of Kucksdorf.

The Office Action refers to Figs. 22 and 23 of Kucksdorf for its disclosure of a bag having opposing end flaps with handles formed therein. However, it is entirely unclear how the rectangular folded end flaps of Kucksdorf could be modified to include a tear seam according to Warr to form an opening in the bag. The tucked portions of the rectangularly folded ends of Figs. 22 and 23 would interfere with a tear seam that provides an opening for the bag. In order to do so, the rectangular fold configuration of Kucksdorf would need to be modified to include a relatively flat end portion according to Warr, which would destroy the rectangular fold functionality of Kucksdorf and its disclosed advantages. Thus, it would not have been obvious to modify Kucksdorf to include a tear seam according to Warr as proposed in the Office Action.

Further, it would be against the teachings of Kucksdorf to include a tear seam according to Warr to provide a bag opening. Kucksdorf specifically discloses bag configurations having pour spouts formed in the end portions (see e.g., Figs. 13 and 19). The pour spouts are formed via cutting “fold portion 23 along a line indicated by the cut line 25A in Fig. 12.” Col. 6, lines 18-20. Thus, even if Kucksdorf were modified in view of Warr to include a tear seam, the combination would presumably provide the pour spout configuration of Kucksdorf with a tear seam opening for the tear spout, which would not include the pair of handles in the end flaps of Figs. 22 and 23 of Kucksdorf. Thus, even if combined, Kucksdorf in view of Warr would fail to provide the claimed invention of claims 15 and 29.

Accordingly, Applicants respectfully submit that independent claims 15 and 29 are allowable over Kucksdorf in view of Warr. In addition, Applicants respectfully submit that claims 4, 6-10, 16-28 and 30-32, which, as amended, depend from one of independent claims 15 and 29, are allowable over Kucksdorf in view of Warr, and further in view of the novel features recited therein.

*New Claims 42-57*

New claims 42-57 depend from one of independent claims 5 and 15 and are allowable along with their respective base claim and further in view of the novel features recited therein.

*Conclusion*

Based on the foregoing, Applicants respectfully submit that the application is in condition for allowance and a Notice to that effect is earnestly solicited. Should the Examiner believe that anything further is desirable in order to place the application in even better form for allowance, the Examiner is respectfully urged to contact Applicants' undersigned representative at the below-listed number.

Respectfully submitted,

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